

Overview of the Utah Office of the Property Rights Ombudsman

Jordan Cullimore

Lead Attorney

Office of the Property Rights Ombudsman

Office of the Property Rights...huh?

Om·buds·man

/ämbədzmən/

Official appointed by the government, with a significant degree of independence, who is charged with receiving complaints of rights violations and attempting to resolve them, usually through recommendations or mediation.

History of the Property Rights Ombudsman in Utah

- The Utah Legislature created the office in 1997
- Original mission was to resolve complaints related to regulatory takings and the use of eminent domain
- In 2004, the office's eminent domain dispute resolution process was codified in statute, based upon the Office's experience with the pre-condemnation process
- In 2006, the Legislature expanded the office and gave it the additional responsibility of helping to resolve land use disputes through the advisory opinion process
 - The creation of this function was in response to Senate Bill 170, which proposed to "dismantle the deference granted to local land use decisions by the courts, create broad entitlement to the approval of land use applications, and even impose misdemeanor penalties on planners who crossed the line and improperly applied land use rules."



History of the Property Rights Ombudsman in Utah

- To our knowledge, no other state has an active Property Rights Ombudsman's Office
- The Land Use and Eminent Domain Advisory Board plays an important role to ensure the independence and neutrality of the Office
- In 2008, UDOT estimated that the percentage of its negotiations for the acquisition of property for public projects that fail and result in litigation had dropped by more than seventy-five percent as a result of the use of the OPRO and other new negotiating techniques
- The office is presently staffed by three attorney's and one administrative assistant
- FY 2022 General Appropriation: \$510,000
- In 2022, the Utah Legislature allocated \$250,000 in ongoing funding to the Office to coordinate land use training efforts in Utah



propertyrights.utah.gov



Roles of the OPRO

- The Office educates and helps to resolve disputes in the areas of land use & development, eminent domain, and takings law
- Education
 - Spend a great deal of time in-person, on the phone, by email, etc., answering questions and explaining rights/responsibilities
 - Provide training on takings, eminent domain, and land use topics throughout the state
 - Website: propertyrights.utah.gov
- Dispute Resolution Tools
 - Eminent Domain & Takings
 - Mediation
 - Arbitration
 - Land Use & Development
 - Advisory Opinions
 - Mediation



Eminent Domain & Takings

Pre-condemnation Requirements & Considerations

Utah Code § 78B-6-505

- Make a reasonable effort to negotiate an agreement
 - The condemning entity, to the extent possible, must attempt to treat the transaction as if it were an arms-length transaction
- Recognize existence of a power imbalance
 - Acknowledge there is a power imbalance. The condemning entity has more information, more resources, legal leverage, etc.
- Provide the property owner certain disclosures
 - The condemning entity must:
 - Provide information from the Ombudsman's Office about the condemnation process, along with the Ombudsman's contact information
 - Provide a letter that include certain statements



Introduction to Alternative Dispute Resolution

- The OPRO has authority to, at the request of a property owner, “mediate, or conduct or arrange arbitration for” a dispute between the owner and a condemning entity “involving taking or eminent domain issues.”
- “If arbitration or mediation is requested by a private property owner...and arranged by the Office of the Property Rights Ombudsman, the parties shall participate in the mediation or arbitration as if the matter were ordered to mediation or arbitration by a court.”



Introduction to Mediation

Mediation involves the assistance of a neutral third party, the mediator, in attempting to resolve a dispute. The mediator's function is to assist the parties in their negotiations, by helping the parties define the issues, overcome barriers to communication, and explore different methods of resolving their dispute.



Dispute Over Value – The Additional Appraisal

- The property owner may request an independent appraisal through our office
- Must be “reasonably necessary to resolve the dispute”
- Property Owner chooses appraiser
 - The second appraisal will only help resolve the dispute if it is credible to the property owner.
- Condemning agency required, by law, to pay for the additional appraisal
 - Utah Code § 78B-6-522
- Intended to provide another data point to help further negotiations
- Takes a little extra time and effort
 - Usually much more affordable and timely than filing litigation
 - Helps resolve the dispute
 - Arguably gets a better, more accurate result



Introduction to Arbitration

- Arbitration is a mode of settling differences through the investigation and determination, by one or more unofficial persons selected for the purpose, of some disputed matter submitted to them by the contending parties for decision and award, in lieu of a judicial proceeding.
- Arbitration serves as a beneficial alternative to litigation that can provide a more expeditious and less expensive resolution of dispute.... Parties forego the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.



Typical Issues in Eminent Domain

- Road widenings & new roads
 - Just Compensation
 - Total taking
 - Relocation
 - Partial taking
 - Severance Damages
 - Cost to cure
 - Local roads often acquired through exactions on proposed development
- Easements & facilities for municipal services
- Public utilities - electrical, natural gas, etc.



Eminent Domain Matters

Year matter was closed:	Cities/Towns	County	UDOT
2019	36	15	49
2020	42	4	53
2021	25	7	30
2022	24	3	3
Currently open	5	3	30
TOTALS	132	32	165

Land Use & Development

The Advisory Opinion

- Specific written legal analysis of a land use dispute
- Any party may request an opinion any time before a final decision by the local appeal authority
- \$150 application fee
- Serves as a dispute resolution tool to facilitate an agreement
- Attorney fees & civil penalty provisions
- Each opinion is posted on our website: propertyrights.utah.gov



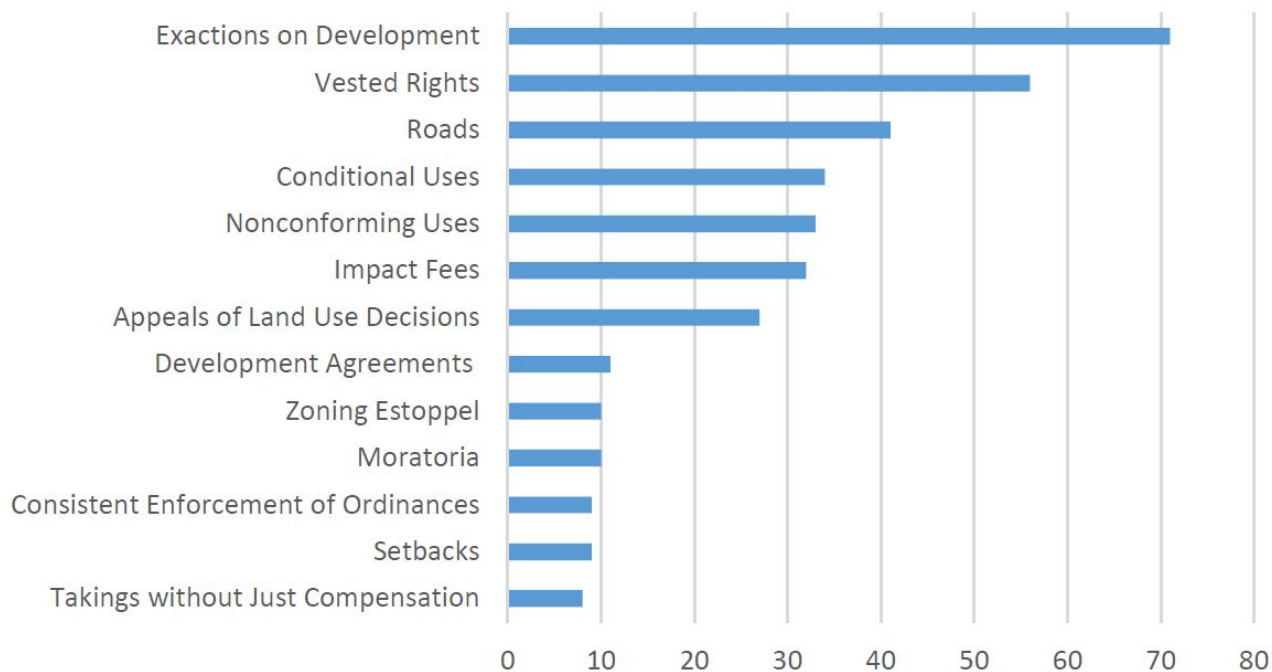
Advisory Opinion Topics

- A: Impact Fees Act
- B: Conditional use applications
- C: Limit on Single Family Designation
- D: Exactions on development
- E: Entitlement to Application Approval (ie, Vesting)
- F: Complete Land Use Application
- G: Proceeding with Reasonable Diligence
- H: Compelling, Countervailing Public Interests
- I: Pending Ordinances
- J: Requirements Imposed Upon Development
- K: Compliance with Mandatory Land Use Ordinances
- L: Review for Application Completeness
- M: Substantive Review of Application
- N: Review of Warranty Work for Completion
- O: Transferable Development Rights
- P: Application Review Fees
- Q: Nonconforming Uses and Noncomplying Structures

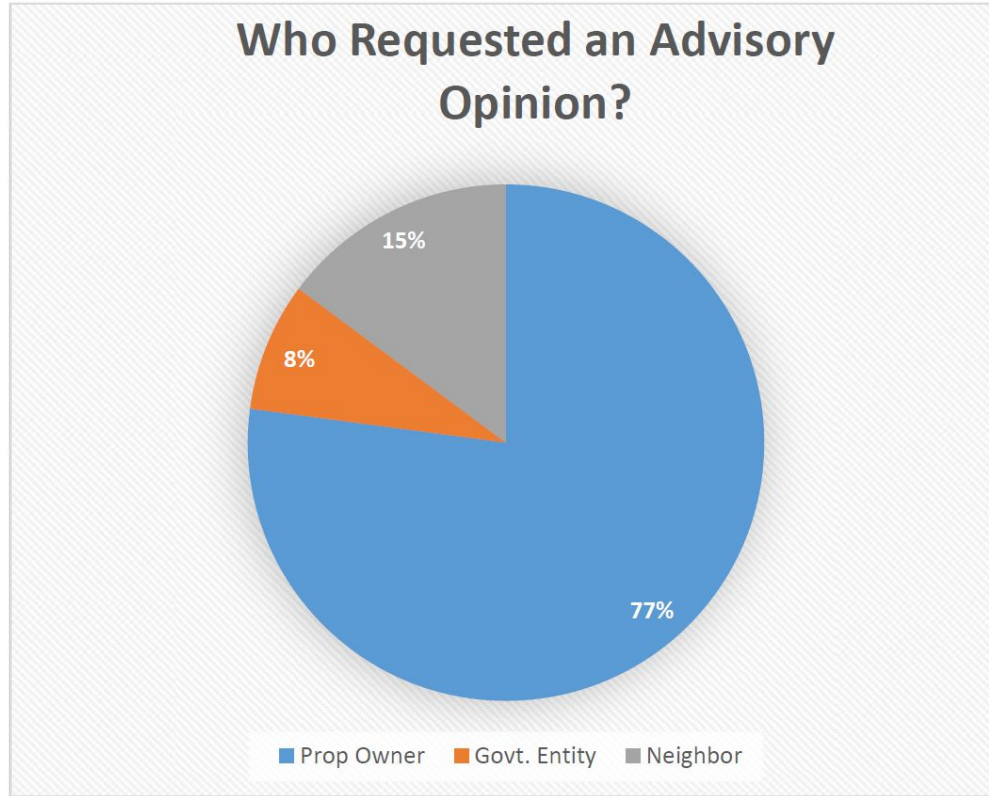


Advisory Opinion Data

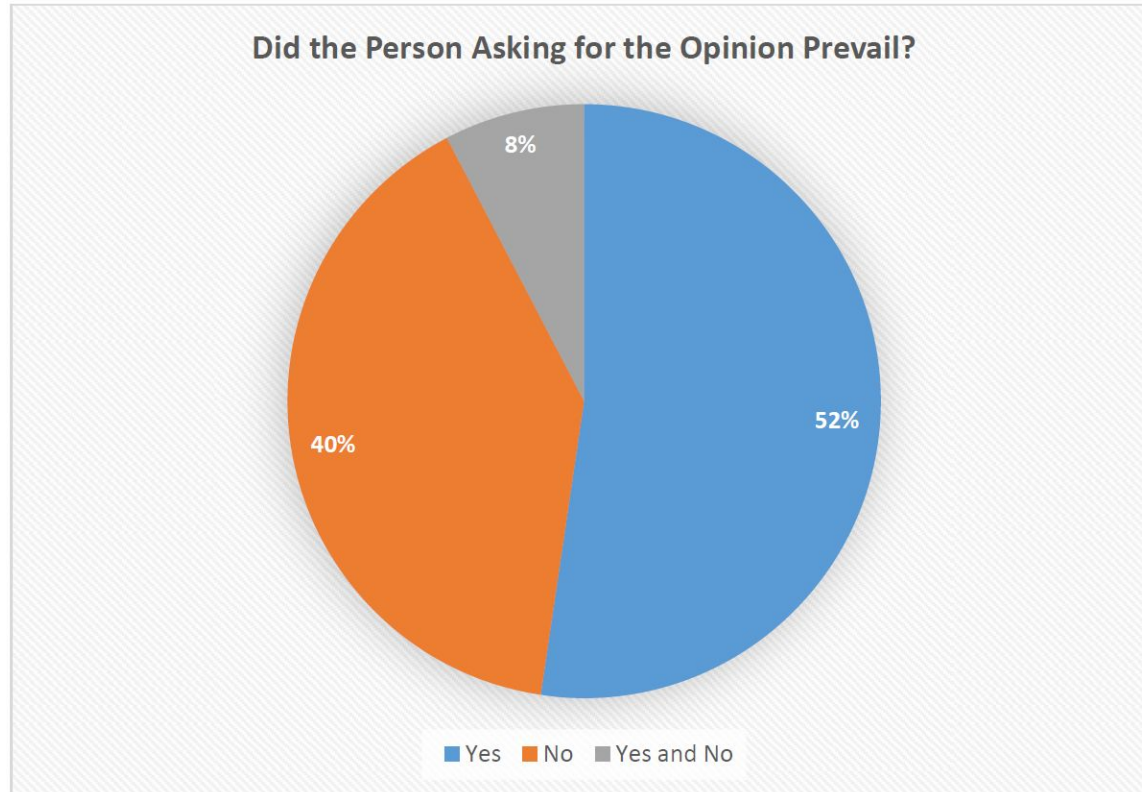
Common Issues in Advisory Opinions



Advisory Opinion Data



Advisory Opinion Data



Education & Training

- The Office attorneys provide training, as requested, on a variety of property rights topics
 - Planning commissions
 - City Councils
 - County Commissions
 - Community groups
 - Industry groups
 - APA, IRWA, Surveyors, Appraisers, Realtors, etc.
- New Training Coordinator Position



Jordan Cullimore

Lead Attorney

Office of the Property Rights Ombudsman

(801) 530-6391

jcullimore@utah.gov

propertyrights.utah.gov